

NO. 10-0366

IN THE SUPREME COURT OF TEXAS

IN RE

JOHN DOES 1 AND 2,

RELATORS

From the Ninth Court of Appeals, Beaumont, Texas
No. 09-10-00189-CV

Trial Court Cause No. E-184784

**GOOGLE INC.'S RESPONSE TO RELATORS' PETITION FOR WRIT OF
MANDAMUS AND MOTION FOR EMERGENCY STAY**

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ATTORNEYS FOR GOOGLE INC.

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TABLE OF AUTHORITIES

N/A

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to the Court's notice dated May 20, 2010 and the Texas Rules of Appellate Procedure, real party in interest Google Inc. ("Google") submits this combined response to Relators' Petition for Writ of Mandamus (the "Petition") and Motion for Emergency Stay (the "Motion"), and states:

I. INTRODUCTION

1. The underlying action is a Rule 202 pre-lawsuit proceeding in which real parties in interest PRK Enterprises, Inc. and Klein Investments, Inc. (together, "Klein") seek certain identifying information from Google regarding two "blogs" and, potentially, the Relators. According to the Petition, the Relators are authors of content on the two blogs, which are, according to the Relators, devoted chiefly to criticizing Philip R. Klein. *See* Petition at 1 and 2.

II. RESPONSE TO THE PETITION

2. The dispute raised in the Petition is fundamentally between Klein and the Relators. It involves the primary issue of whether Klein is entitled to obtain identifying information about the blogs and, potentially, the Relators from Google. As discussed in the Petition, there are First Amendment issues potentially implicated with Klein's request of Google. *See* Petition at 14-17. Google takes no position on those First Amendment issues, but agrees that those issues should be resolved prior to Google providing any identifying information to Klein. In fact, that was the reasoning behind the two Rule 11 agreements entered into between Klein and Google. *See* Appendix at Exhibits A and B.

III. RESPONSE TO THE MOTION

3. Google is unopposed to the Motion.

IV. CONCLUSION

4. Google is, quite simply, “caught in the middle” of this dispute between Klein and the Relators. If ordered to do so, Google will provide information responsive to Klein’s previously issued subpoena regarding identifying information in Google’s possession, custody, or control, subject to Google’s previously asserted objections to the subpoena.¹ But, Google does not want to prematurely provide such information until the First Amendment issues between Klein and the Relators are finally and fully resolved.

Respectfully submitted,

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¹ Google’s objections to the subpoena are not at issue in this proceeding and have never been challenged in the trial court. The second Rule 11 agreement makes that clear. *See* Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2010, a true and correct copy of the foregoing document has been sent via facsimile to the following counsel of record:

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